

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CALVIN MALONE, et al.,
Plaintiffs,
v.
WASHINGTON STATE, et al.,
Defendant

No. 3:14-CV-05974-RBL-JRC

ORDER DIRECTING PLAINTIFFS TO PERFECT SERVICE

This 42 U.S.C. §1983 civil rights matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1, MJR 3, and MJR 4.

Plaintiffs paid the full filing fee and are not proceeding *in forma pauperis*. Dkt. 1. Plaintiffs allege that defendant Becky Denny failed to assure that plaintiffs had proper access to the courts. Dkt. 66 ¶ 4.13. In a separate report and recommendation, the Court addressed defendants Ferguson, Gregoire, Quigley, Clayton, Strong, Dubble, Steinbach, McCabe, Coryell, Sziebert and Harris' motion to dismiss. Dkts. 64, 71.

Fed. R. Civ. P. 4(m) provides that if service of a summons and complaint is not made within 120 days of filing the court shall dismiss without prejudice unless plaintiff can show good

ORDER

1 cause why service was not made within that time. Ignorance of the rules is not good cause.

2 *Towns v. County of Contra Costa*, 820 F.2d 319, 320 (9th Cir.1987). Service on an address is
3 meaningless if defendant does not receive the service. The standard of review is abuse of
4 discretion, which indicates that a court has discretion in deciding if dismissal is proper. *Wei v.*
5 *State of Hawaii*, 763 F.2d 370, 371 (9th Cir. 1985).

6 Plaintiffs have the duty to prosecute this action against defendant Denny and move the
7 case forward. Here, there is no evidence that plaintiffs attempted to serve defendant Denny, or
8 that defendant Denny is aware of the action. A court cannot exercise jurisdiction over a
9 defendant without proper service of process. See *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*,
10 484 U.S. 97, 104 (1987); *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840
11 F.2d 685, 688 (9th Cir.1988) (“A federal court does not have jurisdiction over a defendant unless
12 the defendant has been served properly under Fed. R .Civ. P. 4”).

13 Accordingly, the Court orders plaintiffs to perfect service on defendant Denny within 120
14 days of the filing of plaintiffs’ third amended complaint (Dkt. 66), on or before September 28,
15 2015.

16 Dated this 6th day of August, 2015.

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20 J. Richard Creatura
21 United States Magistrate Judge
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ORDER